the option. The option giver is sure of a fair price for his land, otherwise he can not be compelled to convey. The *a priori* principle of lack of mutuality of agreement at the moment of acceptance should have no weight where considerations of business policy demand a different rule as they do in the case of "paid for offers". The withdrawal of the offer should be inoperative.[5] Parties rarely have in mind the subtle distinctions between an offer with consideration and an agreement to sell with a nominal consideration, accompanied by a condition subsequent that the agreement should become void if the full purchase price should not be paid.[6] As a matter of pure theory, however, an acute writer has shown that a correct analysis of juristic concepts would show that in "paid for offers" an irrevocable power has been given.[7] Here, as in so many cases, accurate thinking leads to sound practical results.

A. M. K.

PUBLIC LAND LAW: JURISDICTION OF LAND DEPARTMENT.—The policy of the Supreme Court of the United States in interpreting the powers and jurisdiction of the land department in disposing of public lands[1] has been one of extreme liberality. The decisions of the department upon questions of fact which are within its jurisdiction are, in the absence of fraud, imposition or mistake, conclusive;[2] and even upon mixed questions of law and fact or of law alone, the action of the department "will carry with it a strong presumption of its correctness, and the courts will not ordinarily review it, although they may have the power, and will occasionally exercise the right of so doing".[3]

The power of the land department is not unlimited, however, nor can that power "be arbitrarily exercised so as to deprive any person of land lawfully entered and paid for".[4] It is so held in the case of *El Paso Brick Company v. McKnight,* where the land department had refused to allow an applicant for placer patent to file an amended affidavit of posting. The original affidavit filed had been signed before an officer residing outside of the land dis-

---

[5] Article by D. O. McGovney, 27 Harv. Law Rev. 644.
[6] Article by A. L. Corbin, 23 Yale Law Jour. 641.
[7] Article by W. N. Hohfeld, 23 Yale Law Jour., at p. 50.
[1] These powers are conferred on the interior department by U. S. Rev. Stats., §§ 441, 453, 2478.
[2] Whitcomb v. White (1909), 214 U. S. 15, 16, 53 L. Ed. 889, 29 Sup. Ct. Rep. 599; Bates & Guild Co. v. Payne (1904), 194 U. S. 106, 108, 48 L. Ed. 894, 24 Sup. Ct. Rep. 595; De Cambra v. Rogers (1903), 189 U. S. 119, 122, 47 L. Ed. 734, 23 Sup. Ct. Rep. 519; Barden v. Northern Pacific R. R. Co. (1894), 154 U. S. 288, 327, 38 L. Ed. 992, 14 Sup. Ct. Rep. 1030.
[3] Bates & Guild Co. v. Payne (1904), 194 U. S. 106, 109, 48 L. Ed. 894, 24 Sup. Ct. Rep. 595; United States v. Graham (1884), 110 U. S. 219, 221, 28 L. Ed. 126, 3 Sup. Ct. Rep. 582.
[4] (April 6, 1914), 233 U. S. 250, 257, 34 Sup. Ct. Rep. 498, 501.

trict in which the application was made and this was held by the department to be a fatal defect which invalidated the entire proceeding and the entry was canceled. The applicant thereupon filed a new application for patent which was adversed by a rival claimant of the land and the customary suit was instituted in a court of competent jurisdiction to try the right of possession. The case reached the Supreme Court of the United States which held that the land department's cancelation was based upon a mistake of law and was, therefore, subject to judicial review and did not operate to deprive the original applicant of its property in the mines and the irregularity in the proof of posting was not jurisdictional and could be corrected. The court said in the course of its opinion that the policy of the United States in disposing of its public lands is not that of the ordinary proprietor of real estate, who seeks to sell at the highest possible price, but the land is offered on liberal terms to encourage the citizen and to develop the country. "The Government does not deal at arms length with the settler or locator and whenever it appears that there has been a compliance with the substantial requirements of the law, irregularities are waived or permission is given, even on appeal, to cure them by supplemental proofs."[5]

W. E. C.

PUBLIC SERVICE COMPANY: INSURANCE COMPANY.—It is impossible to frame a permanent, inelastic list of the occupations that fall within the category of public service callings. For, while the basic principles of the law of public service have remained fairly stable, changes in economic conditions have rendered no longer necessary the inclusion of certain occupations within the class subject to this extraordinary regulation, while at the same time other callings by changing circumstances have risen from private to be of public concern, and have become subject in consequence to governmental regulation. For example, in the fifteenth century the surgeon[1] and the blacksmith[2] were regarded as engaged in public callings. We have long since ceased to find it necessary to include these occupations in the list of public callings,[3] and in their stead are found such utilities as light[4] and water companies.[5] The most recent enlargement of the field has been accomplished by the decision of the United States Supreme

---

[5] Ibid., p. 258.

[1] Anon. (1441), Year Book, 19 Hen. vi. 49, pl. 5.

[2] Anon. (1450), Keilway, 50, pl. 4; Year Book, 46 Ed. iii, 19, pl. 19.

[3] Hurley v. Eddingfield (1901), 156 Ind. 416, 59 N. E. 1058, 53 L. R. A. 135, 83 Am. St. Rep. 198; Bessette v. People (1905), 193 Ill. 334, 62 N. E. 215, 56 L. R. A. 558; Wyman, Public Service Corp. §§ 6, 8.

[4] Gibbs v. Consd. Gas Co. (1888), 130 U. S. 396, 32 L. Ed. 979, 9 Sup. Ct. Rep. 553.

[5] Spring Valley Water Wks. v. Schottler (1884), 110 U. S. 347, 28 L. Ed. 173, 4 Sup. Ct. Rep. 48.